

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 05-189V

Filed: February 5, 2007

NOT TO BE PUBLISHED

OTTONIEL BARRIOS, *
as the legal representative of his minor son, *
EDGAR ALEXANDER BARRIOS, *

Petitioner, *

v. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Damages; Proffer on Award of
Compensation

Curtis Webb, Webb, Webb & Guerry, Twin Falls, ID, for petitioner

Catharine Reeves, U.S. Department of Justice, Washington, D.C., for respondent

DECISION ON DAMAGES¹

GOLKIEWICZ, Chief Special Master.

____ On May 12, 2005, respondent conceded entitlement in this case. The parties engaged their respective life care planners for the purpose of ascertaining petitioner's long-term vaccine-related needs and filed their respective life care plans. On September 19, 2006, a Hearing on

¹The undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

damages was convened to determine the appropriate amount of life care compensation for the items which were in dispute. On January 5, 2007, respondent filed his Supplemental, Revised Proffer on Award of Compensation, including **Items of Compensation for Edgar Barrios** (Tab 1). On January 26, 2007, petitioner filed his Waiver of Claim for Loss of Earning Capacity and Request for Decision Awarding Compensation, acceding to the Secretary's proffer except for the use of the grantor reversionary trust. Respondent filed his response on January 29, 2007 stating he had no objection to the relief requested by petitioner. The case is now ripe for decision.

After a complete review of the record and based upon the evidence adduced at the Hearing on damages, the court finds that petitioner, Edgar Barrios, is entitled to an award under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 et seq., as reflected in Respondent's Proffer on Award of Compensation and the attached chart, ***Tab 1: Items of Compensation for Edgar Alexander Barrios***. The court is convinced, based upon its experience and information in the record, that this award shall provide reasonable compensation to cover Edgar Barrios's vaccine-related expenses.

Form of Compensation Award

1. **Growth Rate:**

The appropriate growth rate for all life care items is 4% compounded annually from the date of judgment.

2. **Lump Sum:**

A lump sum payment in the amount of **\$599,289.19**, representing compensation for pain and suffering (\$227,142.00), life care expenses for the first year (\$321,235.71), and past unreimbursed medical expenses (\$50,911.48) shall be payable in the form of a check to Edgar Barrios. No payment shall be made to Edgar until he reaches the age of eighteen (18) years on March 9, 2007.

A lump sum payment in the amount of **\$495,000.00**, representing compensation for satisfaction of the services rendered to Edgar Barrios from June 26, 2004 to September 1, 2006, at Arkansas Children's Hospital, payable jointly to petitioner and

Arkansas Children's Hospital
Attn: Medical Billings
800 Marshall Street
Little Rock, AR 72202-3501

Petitioner agrees to endorse this payment to the Arkansas Children's Hospital.

3. Annuity:

Section 15(f)(4) requires that payment of compensation be based on the net present value of the elements of compensation. One way of discounting to net present value is to use the cost of an annuity to provide periodic payments to meet projected needs of a petitioner for the remainder of his life. Special masters are specifically empowered by §15(f)(4) of the Act to order that the compensation awarded under the Program be used to purchase an annuity. The court considers it in Edgar Barrios's best interest to order that the compensation for life care items awarded beyond year one post-judgment be paid in the form of an annuity, which annuity shall be purchased as soon as practicable after entry of judgment.

The court awards an amount sufficient to purchase an annuity contract(s), subject to the conditions described below, that will provide payments for the life care items contained in the life care plan, as illustrated by the chart at Tab 1 attached hereto, paid to the life insurance company from which the annuity(ities) will be purchased. Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent years shall be provided through respondent's purchase of an annuity(ities), which annuity(ities) shall make payments directly to Edgar Barrios only so long as Edgar Barrios is alive at the time a particular payment is due, for all items of care set forth in the attached chart.

At the Secretary's sole discretion, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The "annual amounts" set forth in the attached chart describe only the total yearly sum to be paid to the trustee and do not require that the payment be made in one annual installment.

The annuity company must meet the following criteria:²

- 1) has a minimum of \$250,000,000 of capital and surplus, exclusive of any mandatory security valuation reserve; and
- 2) has one of the following ratings from two of the following rating organizations:
 - a) A.M. Best Company: A+, A+g, A+p, A+r or A+s;
 - b) Moody's Investors Service Claims Paying Rating: Aa3, Aa2, Aa1 or Aaa;
 - c) Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+ or AAA;

²These criteria are taken from the December 1990 draft of the Uniform Periodic Payment of Judgments Act.

- d) Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+ or AAA.

4. **Life Contingent Annuity:**

A finding on life expectancy is unnecessary because this annuity will be a lifetime annuity. Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as Edgar is alive at the time that a particular payment is due. Representatives of the estate of Edgar Barrios shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Edgar's death.

CONCLUSION

Petitioner, Edgar Barrios, is entitled to an award under the Vaccine Program to provide for compensable expenses as stated in the attached chart. Petitioner's award of compensation shall be in the form of an annuity as provided for in paragraph 3 above, together with the following lump sum payments:

1. A lump sum payment in the amount of \$599,289.19, representing compensation for pain and suffering (\$227,142.00), life care expenses for the first year (\$321,235.71), and past unreimbursed medical expenses (\$50,911.48) shall be payable in the form of a check to Edgar Barrios. No payment shall be made to Edgar until he reaches the age of eighteen (18) years on March 9, 2007;
2. A lump sum payment in the amount of \$495,000.00, representing compensation for satisfaction of the services rendered to Edgar Barrios from June 26, 2004 to September 1, 2006, at Arkansas Children's Hospital, payable jointly to petitioner and Arkansas Children's Hospital.

Based on the foregoing, this Court adopts the parties' Proffer and finds, based on the evidence adduced at the Hearing on damages, that petitioner is entitled to compensation in the amount and on the terms set forth therein. The Clerk of the Court is directed to enter judgment according to this decision.³

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master

³Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.